

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 LASERDYNAMICS, INC.,)

5) (CIVIL DOCKET NO.

6) (2:06-CV-348-TJW-CE

7 VS.)(MARSHALL, TEXAS

8)

9 ASUS COMPUTER)(JULY 1, 2009

10 INTERNATIONAL, ET AL.)(8:30 A.M.

11 MOTIONS HEARING

12 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM

13 UNITED STATES MAGISTRATE JUDGE

14

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(Proceedings recorded by electronic recording equipment,
25 transcript produced on a CAT system.)

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1 P R O C E E D I N G S

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Please be seated.

4 Okay. We're on the record in the

5 LaserDynamics against Quanta Storage matter. The

6 parties -- I think the Plaintiff had raised an issue

7 before the jury came in about two demonstratives, and

8 Judge Ward has asked me to hear the objections while the

9 trial is proceeding upstairs.

10 So before I get started, have y'all met and

11 conferred on these?

12 MR. POLLACK: We did this morning, Your

13 Honor.

14 THE COURT: Okay. Any resolution?

15 MR. POLLACK: No resolution, Your Honor.

16 THE COURT: Okay. Do you have copies of the

17 demonstratives that Ms. Murray --

18 MS. MURRAY: I do, Your Honor.

19 THE COURT: Okay. Okay. Well, just -- for

20 purposes of the record, who's here for the Plaintiff?

21 MR. POLLACK: For Plaintiff, Jeff Pollack,
22 Duane Morris. With me is Jeff Rambin of Capshaw DeRieux
23 and Wesley Yuan from Duane Morris.
24 THE COURT: Okay. And Ms. Murray is here
25 for the Quanta defendants?

1 MS. MURRAY: Yes, sir.

2 THE COURT: Okay. All right. Y'all have a
3 seat.

4 Tell me -- what's the objection?

5 MR. POLLACK: Your Honor, they've produced
6 this -- was two demonstratives, and they're basically
7 identical. One has a dollar sign on it and one does
8 not. In our bench brief that was argued yesterday, we
9 had complained that Quanta had not given us any
10 documents identifying the -- the way the drives were
11 obtained, vis-a-vis the pathways through Philips and
12 Sony, NEC Optiarc.

13 In response, the documents that Quanta
14 identified to us are -- sorry, records identifying
15 computers sold by QCI, sales records, and records
16 identifying all computers sold by QCI.

17 What we haven't seen and what's in this
18 demonstrative are any records showing purchased drives,
19 provide shipping instructions from what's on this
20 demonstrative, customers going to drive vendors, and

21 anything showing -- certainly not showing anything where
22 the OEM, such as Quanta computer, are paying customers,
23 such as HP and Dell, for drives. In fact, that defies
24 common sense since we know that Quanta computer is in
25 the business of selling computers to those customers,

1 not buying drives from them.

2 And, you know, I think what Quanta may come
3 out and say -- I'm predicting here is that they have
4 produced invoices to us that show this transaction.
5 What the invoices are showing is not a purchase of the
6 drives, but the sale of a computer.

7 So we think that this demonstrative -- both
8 these demonstratives are misleading and go well outside
9 the documents produced in the case.

10 THE COURT: What do the invoices show that
11 have been produced from Quanta computer to the
12 customers?

13 MS. MURRAY: Your Honor, there are hundreds
14 of thousands of pages of invoices. I think there's some
15 confusion here about what the bench brief was related to
16 and what -- what we're trying to show by this slide.

17 The invoices show purchases of components,
18 and they also show sale of computers which contain those
19 components in them. But when Quanta sells a computer
20 back to the customer, it doesn't then charge for each

21 component part. It just charges for the computer.

22 This demonstrative, just to put it in

23 context, is explaining just one way that Quanta Computer

24 obtains its drives. This was brought out already by

25 Plaintiff in his case-in-chief yesterday, that there's a

1 buy/sell arrangement where Quanta actually purchases a
2 drive first from a customer, then puts it in its
3 computers, and then sells it back to the customer.
4 That's been in the agreements that were shown to the
5 jury yesterday. Those manufacturing agreements between
6 Quanta and its customers explain this entire
7 transaction. We've produced all of those to them, and
8 our witness has testified about it in Plaintiff's
9 case-in-chief. They had it in their opposition to
10 summary judgment. They have a whole section that we
11 purchase our drives from our customers.

12 This isn't any new information. We're not
13 using it, based on our bench brief yesterday which was
14 to rebut their -- any testimony from their damages
15 expert, that's not what we're using this for. This is
16 just background to show this is one method that Quanta
17 uses to obtain its drives.

18 MR. POLLACK: Your Honor, having -- having
19 heard that now, my understanding of who Quanta claims
20 their customers are from direct yesterday, are the drive

21 vendors, the companies like Optiarc, Philips, etc. And

22 they way this --

23 MS. MURRAY: That's not accurate.

24 MR. POLLACK: -- the way this exhibit show

25 -- is set up --

1 THE COURT: Hold -- hold on, Ms. Murray.

2 Let's -- I'll let you respond --

3 MS. MURRAY: I'm sorry, Your Honor.

4 THE COURT: No, we don't do back and forth

5 in here. Okay? At least -- we'll do back and forth,

6 but not between y'all, to me.

7 MS. MURRAY: I understand. I apologize.

8 MR. POLLACK: Well, let me -- let me -- let

9 me retract and think about this, Your Honor.

10 MR. RAMBIN: Your Honor, let me -- the --

11 what they're doing is they're changing horses. Our

12 understanding all along in the case was that QCI, the

13 computer manufacturer, was getting these drives directly

14 from the ODD, the disk drive manufacturer, be it QSI

15 directly or by the QSI drives that went to Sony and

16 Phillips and then back into QCI.

17 What this demonstrative is doing and

18 apparently what they're going to try to testify to is

19 something new, saying that those drives -- here's QCI,

20 the drives come -- go all the way up to Dell, HP, Apple,

21 those sorts, and then come back to QCI. That's new.

22 That's outside of the documents.

23 And, again, in the bench brief it did go to

24 the issue of what they could use to rebut James Davis,

25 but the fundamental question was we don't know how QCI

1 is getting the drives coming in. We said we -- we
2 didn't have any documents to that effect. And in their
3 response they try to say yes. Here's what we've told
4 you about where QCI gets its drives coming in, and
5 there's nothing in this briefing. There's nothing in
6 the documents attached hereto that says anything about
7 HP, Dell, Apple. There's not one word of it, not one
8 mention of it.

9 If they can find it in here, then -- then we
10 will apologize and stand down, but --

11 THE COURT: I'm not -- I don't know that
12 anybody is looking for an apology, Mr. Rambin, but what
13 was the -- in the summary judgment motion -- well, what
14 contracts were produced that show that you purchased
15 drives from HP, Dell, IBM, Lenovo, Fujitsu, these other
16 folks?

17 MS. MURRAY: Your Honor, the manufacturing
18 agreement between Quanta and its customers, some of
19 those were actually used in trial yesterday, the Apple
20 agreement, the Sony agreement. These agreements show

21 that Apple decides what components to use and actually
22 purchases those components and Quanta then purchases
23 them from Apple.

24 It's called the buy/sell arrangement. It
25 was in every deposition in this case. They talked about

1 -- this is not new. Mr. Sankey took the depositions of
2 Quanta Computers' witnesses. He said how do you get
3 these drives. Well, there's different ways. Sometimes
4 we do get it from the drive supplier and we will explain
5 that as well, but sometimes we get it from the customer.
6 And he asked, and how do you know which of those drives
7 you get from a customer. Well, let's look at this
8 document we produced. It has a B/S next to those drives
9 that are buy and sell. That document was shown to Ms.
10 Li during trial yesterday. It shows which drives we get
11 from our customer and then it lists the name of the
12 customer that we got those drives from. And this isn't
13 new. This is background of one of the methods we get
14 our drives. It is -- I'm a little surprised that
15 there's -- they're saying that they heard this for the
16 first time.

17 We can produce the deposition transcripts.

18 This isn't new information. It's in our documents.

19 We also have a DVD drive manufacturer list.

20 It's a list of every single drive that Quanta Computer

21 has obtained and then it has the name of the
22 manufacturer and if they got it from a customer, it has
23 a B/S next to it that shows it was part of this buy/sell
24 arrangement.
25 We also have a document showing which

1 customer they got it from.

2 THE COURT: Are those depositions in the
3 building, or a sampling of them?

4 MS. MURRAY: We have -- I believe we have
5 all the depositions from the case, Your Honor, upstairs.

6 THE COURT: On a disk? Okay. When -- when
7 do you propose to use this?

8 MS. MURRAY: We propose to use this when we
9 put on our first witness. We're not sure -- Plaintiff
10 won't tell us which witnesses they're calling, so we
11 don't know.

12 THE COURT: How many more witnesses do y'all
13 have?

14 MR. POLLACK: We have at least three more
15 witnesses.

16 THE COURT: Okay. Is one -- two experts,
17 though, are included in that?

18 MR. POLLACK: Three experts, Your Honor.

19 THE COURT: Three experts are included in
20 that? Okay. Supply me with a sampling of the

21 depositions and a sampling of the contracts that --
22 produced that show that you all buy your drives from
23 these customers. Okay?

24 MS. MURRAY: Okay.

25 THE COURT: And if those documents have been

1 produced, then I'm going to allow them to use them.
2 Okay? If they've been testified about at deposition,
3 then you're going to get to use them. Okay? I'm not
4 trying to -- I'm not trying to be heavy-handed with you.
5 I just want to insure myself that --

6 MS. MURRAY: And I understand.

7 THE COURT: -- that

8 MR. RAMBIN: Your Honor --

9 THE COURT: I'm hearing -- it's difficult
10 when I hear we've produced it all, they haven't produced
11 any of it, this is all news --

12 MS. MURRAY: No, I understand and that they
13 weren't at the deposition so they may not remember them.

14 THE COURT: I understand.

15 MS. MURRAY: There were a lot of
16 depositions.

17 THE COURT: I understand. I understand.

18 MR. POLLACK: Your Honor, if I may, even if
19 there are documents showing that their purchase is
20 coming from the customers of Apple and Dell, I certainly

21 don't think there are any documents showing that Quanta

22 Computer is paying these customers for the drives, and I

23 don't know where that would come from.

24 MR. RAMBIN: I think --

25 MS. MURRAY: That's in our agreement.

1 MR. RAMBIN: I think, Your Honor, that they
2 may be trying to say that in general this is what they
3 do. I don't -- maybe there are contracts out there. I
4 don't know. I don't believe that there are, but -- but
5 the thing is though, as to the accused drives, for that
6 there are certainly no invoices as to the accused drives
7 where QCI is paying for those drives from Dell, Apple,
8 HP, etc.

9 MS. MURRAY: Well, the contracts will cover
10 all the drives that Quanta Computer gets from its
11 customers.

12 THE COURT: Well, I mean, like I said, I'll
13 take a look at it. As I understand it, you're wanting
14 to use this in a general sense to show one way that
15 Quanta --

16 MS. MURRAY: Yes.

17 THE COURT: -- gets its drives?

18 MS. MURRAY: Yes.

19 THE COURT: Well, I'm going to take a look
20 at what they've produced, and even if the accused drives

21 would fall into this category, I think they're entitled
22 as a background matter to show, you know, what their
23 business is. I mean, y'all -- I mean, it's a business
24 case and the jury is entitled to know that. So I'm --
25 I'll take a look at what's been produced.

1 MR. POLLACK: Thank you, Your Honor.

2 MS. MURRAY: Thank you, Your Honor.

3 THE COURT: All right. How soon, Ms.

4 Murray, can I expect those items?

5 MS. MURRAY: I'll do it -- I'll grab them

6 right now.

7 THE COURT: Fast as I can get them.

8 MS. MURRAY: Can I give you hard copies,

9 or --

10 THE COURT: That's fine.

11 MS. MURRAY: -- or you like --

12 THE COURT: That's fine. You can give me

13 hard copies. Just -- if I can get them in an hour or

14 so, that would help.

15 MS. MURRAY: I'll shoot upstairs and --

16 THE COURT: Just -- it's -- I just -- I just

17 want to take a look at a --

18 MS. MURRAY: Okay.

19 THE COURT: Focus on agreements with these

20 folks. Okay?

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: The Court's in recess.

23 * * * * *

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1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a
4 true and correct transcript from the electronic
5 recording of the proceedings in the above-entitled
6 matter to the best of my ability.

7

8

SUSAN SIMMONS

Date

9 Official Court Reporter

State of Texas No.: 267

10 Expiration Date: 12/31/10

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